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**DEC 08 2008**

In re Application of :  
Ruy Tchao :  
Application No.: 09/472490 : DECISION ON  
Filing or 371(c) Date: 12/23/1999 : PETITION  
Attorney Docket Number: 102-302RE/CO :

This is a decision on the Petition for Revival of an Application for Patent Abandoned Unintentionally Under 37 C.F.R. § 1.137(b), filed September 16, 2008.

This Petition is hereby **granted**.

**Background**

The above-identified application became abandoned for failure to timely and properly reply to the final Office action, mailed December 22, 2004, wherein the Examiner rejected claims 46-50. The Office action set a three (3) month period for reply, and provided for extensions of time under 37 CFR 1.136(a).

Applicant filed a Notice of Appeal in response to the Office action on March 21, 2005, and Appeal Brief on May 19, 2005. The Examiner filed an Answer on June 14, 2006. A Request for Oral Hearing and Reply Brief were filed July 31, 2006. On October 24, 2006 the Board of Patent Appeals and Interferences (“Board”) entered an “Order Returning Undocketed Appeal to Examiner,” to hold the Appeal Brief Defective and to have the Examiner consider an Information Disclosure Statement (“IDS”). The Examiner mailed a Notice of Non-Compliant Appeal Brief on November 8, 2006. In response to the Notice, Applicant filed an Appeal Brief on December 8, 2006; the Examiner filed an Answer on February 23, 2007, and Applicant filed a Reply Brief on April 19, 2007.

On June 7, 2006, the Board again entered an “Order Returning Undocketed Appeal to Examiner,” to have the Examiner consider the IDS. Thereafter the case was docketed, and the Board issued a Decision on January 28, 2008, affirming the rejection of claims 46-50 under the judicially created doctrine of obviousness patenting of claims 1-19 of RE38,383 E; affirming the rejection of claims 46-50 under 35 U.S.C. § 251 based on a defective reissue oath/declaration, and reversing the Examiner on claims 46-48 and 50 under 35 U.S.C. § 112, first paragraph, for lack of enablement, and reversing the Examiner’s rejection of claims 46-48 and 50 under 35 U.S.C. § 251 as improperly broadening the scope of the claims of Patent No. 5,601,997. The case was returned to the Examiner for action consistent with the Board’s Decision.

The June 11, 2008 petition to withdraw the holding of abandonment under 37 CFR 1.181

Applicant filed a petition under 37 CFR 1.181 on June 11, 2008, and stated that the Examiner failed to issue an action consistent with the Board's decision, but only issued a Notice of Abandonment. Applicant's therefore petitioned to withdraw the holding of abandonment based on the failure to receive an Office action consistent with the Board's Decision.

The August 26, 2006 Decision dismissing the petition

A Decision dismissing the petition was mailed on August 26, 2008. The Decision noted that in this instance, all claims stood rejected after the Board's decision of January 28, 2008. The present application was properly held abandoned because Court proceedings were terminated on January 28, 2008.

The present petition

Applicant files the present petition and Request for Continued Examination ("RCE"), and a submission in the form of a Terminal Disclaimer ("TD"). The petition satisfies the conditions for revival pursuant to the provisions of 37 CFR 1.137(b) in that (1) the reply in the form of a RCE and submission; (2) the petition fee; and (3) the required statement of unintentional delay have been filed with the present petition. Accordingly, the reply is accepted as having been unintentionally delayed. Accord MPEP 1214.07.

The application is being referred to Technology Center Art Unit 1794 for processing of the RCE and submission.

Telephone inquiries concerning this petition Decision should be directed to the undersigned at (571) 272-3232.

/Derek L. Woods/  
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